

APPEAL NO. 021831
FILED SEPTEMBER 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 17, 2002. With respect to the single issue before him, the hearing officer determined that MP and KP are not proper legal beneficiaries of (decendent) and, thus, are not entitled to death benefits under the 1989 Act. The appellant (claimant), the grandmother and next friend of MP and KP, appeals that determination. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The parties stipulated that the decedent died in the course and scope of his employment on _____. The decedent was the grandfather of MP and KP. The hearing officer found that the decedent made regular and recurring payments to the claimant for support of his minor grandchildren, MP and KP. However, he further determined that MP and KP are not proper legal beneficiaries under the 1989 Act because they did not establish that they were dependent on the decedent at the time of his death.

Pursuant to Section 408.182(f)(2) an "eligible grandchild" is defined as a "grandchild of a deceased employee who is a dependent of the deceased employee and whose parent is not an eligible child." There is no dispute that MP and KP's father, the decedent's son, is not an eligible child under Section 408.182(f)(1). Thus, the controlling question in this case is whether MP and KP were dependents of the decedent. To make that determination, we look to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.2(c) (Rule 132.2(c)). Specifically, Rule 132.2(c) provides, in relevant part, that "[i]t shall be presumed that an economic benefit, whose value was equal to or greater than 20% of the person's net resources in the period . . . for which the benefit was paid, is an economic benefit which contributed substantially to the person's welfare and livelihood." In this instance, the hearing officer was not persuaded that the evidence presented by the claimant was sufficient to establish that the contributions made by the decedent to the claimant for the benefit of MP and KP were equal to 20% of their net resources during the period of those payments. Thus, the hearing officer further determined that the claimant did not sustain her burden of proving that MP and KP were dependent upon the decedent such that they were eligible grandchildren under Section 408.182(f). Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's decision on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge